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8	BEFORE THE	
9	PHYSICAL THERAPY BOARD OF CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS	
10	STATE OF CAL	IFORNIA
11	In the Matter of the First Amended Accusation	Case No. ID 2004 63740
12	Against:	and ID 2004 63939
13	MICHAEL MALACZEWSKI 3504 E 1st Avenue, #7	FIRST AMENDED ACCUSATION
14	Long Beach, CA 90803	ACCUSATION
15	Physical Therapist License No. PT 28993	
16	Respondent.	
17		
18	Complainant alleges:	
19	<u>PARTIES</u>	
20	1. Steven K. Hartzell (Complainant) brings this Accusation solely in his	
21	official capacity as the Executive Officer of the Physical Therapy Board of California,	
22	Department of Consumer Affairs.	
23	2. On or about December 11, 20	03, the Physical Therapy Board of California
24	issued Physical Therapist License No. PT 28993 to N	MICHAEL MALACZEWSKI (Respondent).
25	The Physical Therapist License was in full force and	effect at all times relevant to the charges
26	brought herein and will expire on November 30, 200	5, unless renewed.
27	///	
28	//	

## **JURISDICTION**

- 3. This Accusation is brought before the Physical Therapy Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.
  - 4. Section 2609 of the Code states:

The board shall issue, suspend, and revoke licenses and approvals to practice physical therapy as provided in this chapter.

5. Section 2660 of the Code states:

The board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon, or issue subject to terms and conditions any license, certificate, or approval issued under this chapter for any of the following causes:

- (d) Conviction of a crime which substantially relates to the qualifications, functions, or duties of a physical therapist. The record of conviction or a certified copy thereof shall be conclusive evidence of that conviction.
- (i) Conviction of a violation of any of the provisions of this chapter or of the State Medical Practice Act, or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter or of the State Medical Practice Act.
- (l) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, or duties of a physical therapist.
  - 6. Section 2661 of the Code states:

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of a felony or of any offense which substantially relates to the qualifications, functions, or duties of a physical therapist is deemed to be a conviction within the meaning of this article. The board may order the license suspended or revoked, or may decline to issue a

1	license, when the time for appeal has elapsed, or the judgement of conviction has been affirmed	
2	on appeal or when an order granting probation is made suspending the imposition of sentence,	
3	irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing that person	
4	to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict	
5	of guilty, or dismissing the accusation, information, or indictment.	
6	<u>COST RECOVERY</u>	
7	7. Section 2661.5 of the Code states:	
8	(a) In any order issued in resolution of a disciplinary proceeding before	
9	the board, the board may request the administrative law judge to direct any	
10	licensee found guilty of unprofessional conduct to pay to the board a sum not to	
11	exceed the actual and reasonable costs of the investigation and prosecution of the	
12	case.	
13	FIRST CAUSE FOR DISCIPLINE	
14	(Conviction of a Crime)	
15	8. Respondent is subject to disciplinary action under Code sections 2660(d)	
16	and 2660(i), in that he was convicted of a crime substantially related to the qualifications,	
17	functions, or duties of a physical therapist. The circumstances are as follows:	
18	Conviction of August 15, 2000	
19	A. On or about July 21, 2000, Respondent was arrested and	
20	cited for shoplifting a videotape from a store in violation of violating 2C-20-11	
21	[shoplifting].	
22	B. A Complaint was filed in Municipal Court, Borough of	
23	Brooklawn, in the State of New Jersey, entitled The State of New Jersey vs.	
24	Michael T. Malaczewski, charging Respondent with violating Statute No. 2C-20-	
25	11 [shoplifting].	
26	C. On or about August 15, 2000, Respondent pled guilty to	
27	violating a city ordinance of disturbing the peace and was fined.	

## **Conviction of August 16, 2004**

D. On or about July 18, 2004, while a patrol vehicle was
waiting for a tow truck to hook a vehicle up, Respondent struck the patrol vehicle
from behind. The force of the impact caused the patrol vehicle to hit the vehicle
on the tow truck, which hit the tow truck operator causing injury to the tow truck
operator. Respondent refused to submit to field sobriety tests and was
subsequently arrested for driving under the influence of alcohol in violation of
California Vehicle Code section 23152(a) and 23152(b).

- E. On or about July 22, 2004, a Complaint was file in Superior Court of the State of California, County of Los Angeles, entitled *The People of the State of California v. Michael Thomas Malaczewski*, Case No. 04LL01233, charging Respondent with Count 1 violating Vehicle Code section 23152(a) [driving while under the influence of alcohol] and Count 2 violating Vehicle Code section 23152(b) [driving while having 0.08% or more, by weight of alcohol in her blood].
- F. On or about August 16, 2004, Respondent pled nolo contendere and was convicted of Count 2- violating Vehicle Code section 23152(b). He was granted summary probation with terms and conditions.

## SECOND CAUSE FOR DISCIPLINE

## (Dishonest Acts)

- 9. Respondent is further subject to disciplinary action under Code section 2660(1), in that he committed dishonest acts when he failed to disclose his 2000 conviction on his application for licensure and . The circumstances are as follows:
  - A. Complainant incorporates paragraph 8 above as if fully realleged;

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1	B. On or about July 1, 2003, Respondent signed his		
2	application for licensure as a physical therapist under penalty of perjury.		
3	Respondent disclosed a 2001 driving under the influence conviction on his		
4	application for licensure;		
5	C. On December 11, 2003, Respondent was issued Physical		
6	Therapy License No. PT 28993 based on the information he provided on his		
7	application;		
8	D. Respondent failed to disclose his August 15, 2000,		
9	conviction on his application for licensure (application dated July 1, 2003).		
10	<u>PRAYER</u>		
11	WHEREFORE, Complainant requests that a hearing be held on the matters herein		
12	alleged, and that following the hearing, the Physical Therapy Board of California issue a		
13	decision:		
14	1. Revoking or suspending Physical Therapist License No. PT 28993, issued		
15	to MICHAEL MALACZEWSKI.;		
16	2. Ordering Michael Malaczewski to pay the Physical Therapy Board of		
17	California the reasonable costs of the investigation and enforcement of this case, pursuant to		
18	Business and Professions Code section 2661.3;		
19	3. Taking such other and further action as deemed necessary and proper.		
20	DATED: <u>December 13, 2004.</u>		
21			
22	Original Signed By;		
<ul><li>23</li><li>24</li></ul>	STEVEN K. HARTZELL Executive Officer Physical Therapy Board of California		
25	Department of Consumer Affairs State of California		
26	Complainant		
27			
28	80043643.wpd		